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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

ROEL GALICIA, individual, and on behalf of
other members of the general public similarly
situated and on behalf of other aggrieved
employees pursuant to the California Private
Attorneys General Act;

Plaintiff,

v.

JIF-PAK MANUFACTURING, LLC, a
California Corporation; and DOES 1 through
100, inclusive,

Defendants.

Case No.: 37-2020-00005233-CU-OE-
CTL

Honorable Kenneth J. Medel
Department C-66

CLASS ACTION

**PLAINTIFF'S NOTICE OF MOTION
AND MOTION FOR FINAL APPROVAL
OF CLASS ACTION AND PAGA
SETTLEMENT; MEMORANDUM OF
POINTS AND AUTHORITIES**

[Declaration of Settlement Administrator
(Desirae Burton); [Declaration of Proposed
Class Counsel (Edwin Aiwazian);
Declaration of Class Representative (Roel
Galicia); Notice of Motion for Attorney's
Fees, Costs, and Enhancement Payment;
[Proposed] Order Granting Final Approval of
Class Action Settlement and Judgment; and
[Proposed] Order Awarding Attorney's Fees,
Costs, and Enhancement Payment filed
concurrently herewith]

Date: November 17, 2023
Time: 9:30 a.m.
Department: C-66

Complaint Filed: January 29, 2020
FAC Filed: February 14, 2023
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on November 17, 2023 at 9:30 a.m. or as soon thereafter
2 as the matter may be heard before the Honorable Kenneth J. Medel in Department C-66 of the
3 Superior Court of California for the County of San Diego located at 330 West Broadway, San
4 Diego, California 92101, Plaintiff Roel Galicia (“Plaintiff” or “Class Representative”) will, and
5 hereby does, move for an order:

6 1. The proposed class action settlement described herein and as set forth in the
7 partes’ Joint Stipulation of Class Action and PAGA Settlement and Release (“Settlement,”
8 “Agreement,” or “Settlement Agreement”) on the grounds that the Settlement is fair, adequate,
9 and reasonable because:

- 10 • A Net Settlement Amount of approximately **\$1,492,772.89** will be distributed to the
11 Class Members who did not submit timely and valid Request for Exclusion
12 (“Settlement Class Member”);
- 13 • **No Notices of Objections** were submitted to the settlement administrator, Simpluris,
14 Inc. (“Settlement Administrator” or “Simpluris”);
- 15 • **No Requests for Exclusion** were submitted to the Settlement Administrator; and

16 2. Payment in the amount of **\$11,000.00** to the Settlement Administrator, Simpluris,
17 for Settlement Administration Costs;

18 This Motion is made pursuant to Rule 3.769 of the California Rules of Court, which
19 requires approval by the Court of a class action settlement.

20 This motion is based upon the following Memorandum of Points and Authorities and the
21 Declaration of Settlement Administrator (Desirae Burton of Simpluris) in support thereof; as
22 well as the concurrently-filed Notice of Motion and Motion for Attorneys’ Fees, Costs, and
23 Enhancement Payment, and the Declarations of Class Counsel (Edwin Aiwazian) and Class
24 Representative (Roel Galicia) in support thereof; the pleadings and other records on file with the
25 Court in this matter; and such evidence and oral argument as may be presented at the hearing on
26 this Motion.

27 ///

28 ///

Dated: October 25, 2023

LAWYERS for JUSTICE, PC



By: _____

Yasmin Hosseini

Attorney for Plaintiff and the Class

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7-Eleven Owners for Fair Franchising v. Southland Corp. (2000) 85 Cal.App.4th 1135 8, 14

Chavez v. Netflix, Inc. (2008) 162 Cal.App.4th 43 7, 8

Dunk v. Ford Motor Co. (1996) 48 Cal.App.4th 1794 8, 15

In re American Bank Note Holographics, Inc., Securities Litigation (S.D.N.Y. 2001) 127
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Wershba v. Apple Computer, Inc. (2001) 91 Cal.App.4th 224..... 8, 14

Statutes

Cal. Lab. Code § 2698 1

Other Authorities

Conte & Newberg, *Newberg on Class Actions* (4th Ed., 2002) § 11.47 14

MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Roel Galicia (“Plaintiff” or “Class Representative”) seeks final approval of the Joint Stipulation of Class Action and PAGA Settlement and Release (“Settlement,” “Agreement,” or “Settlement Agreement”) entered into by and between Plaintiff, individually and on behalf of all others similarly situated and other aggrieved employees, and Defendant Jif-Pak Manufacturing, LLC (“Defendant”) (collectively with Plaintiff, the “Parties”).

The Settlement provides for a Gross Settlement Amount of (\$2,500,000.00)¹ and seeks relief on behalf of the following Class:

All current and former hourly-paid or non-exempt employees of Defendant in California at any time during the Class Period (“Class” or “Class Members.”)²

Plaintiff moves for final approval of all payments allocated and provided for by the Settlement, to be paid from the Gross Settlement Amount, including but not limited to, Enhancement Payment in the amount of \$7,500.00 to Plaintiff, attorneys’ fees in the amount of \$875,000.00, which is thirty-five percent (35%) of the Gross Settlement Amount, and reimbursement of litigation costs and expenses in the amount of \$19,977.11 (together, Attorney’s Fees and Costs”)³ to Lawyers for Justice, Settlement Administration Costs in the amount of \$11,000.00 to Simpluris, Inc. (Simpluris” or “Settlement Administrator”), and \$125,000.00 for the PAGA Allocation, of which \$93,750.00 will be paid to the California Labor and Workforce Development Agency (“LWDA”) for its portion of the PAGA Penalties (“LWDA Payment”), and \$31,250.00 will be distributed to Settlement Class Members as part of the Net Settlement Amount, on a *pro rata* basis.

The Settlement is fair, adequate, and reasonable, and is the product of arm’s-length, good-faith negotiations by experienced counsel, presided over by a highly regarded mediator who is experienced in mediating wage-and-hour class action lawsuits. The Settlement has been

¹ Joint Stipulation of Class Action and PAGA Settlement and Release (“Settlement Agreement”), ¶ 7.r.

² Settlement Agreement, ¶ 7.d. “Class Period” is defined as the period of time from January 29, 2016 through April 20, 2022, or the Settlement End Date (defined below in Paragraph 35), whichever is earlier. See id., ¶ 7.f.

³ In the interest of judicial efficiency, and in support of the allocations and requests for the Attorneys’ Fees and Costs and Enhancement Payment, Plaintiff respectfully refers the Court to Plaintiff’s Motion for Attorneys’ Fees, Costs, and Enhancement Payment, and papers in support thereof, filed concurrently herewith, on October 25, 2023.

1 well received by the Class—as of the date of this motion, not a single Class Member has
2 objected to the Settlement or submitted a valid letter to be excluded from the Settlement
3 (“Request for Exclusion”).

4 Accordingly, the Court should grant final approval of the Settlement, and all payments
5 allocated and provided for by the Settlement Agreement, including and not limited to the
6 Individual Settlement Payments to Settlement Class Members, Settlement Administration Costs
7 to the Settlement Administrator, and the PAGA Penalties to the State of California.

8 **II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND**

9 Defendant Jif-Pak Manufacturing, LLC (“Defendant”), is a California corporation which
10 produces netting and casing for meat production and processing. Plaintiff Roel Galicia is a
11 former employee of Defendant.

12 On January 29, 2020, Plaintiff filed a Class Action Complaint for Damages in the San
13 Diego County Superior Court (“Court”), thereby commencing the above- captioned lawsuit
14 (“Action”).

15 On March 10, 2020, Defendant filed an Answer to Plaintiff’s Class Action Complaint for
16 Damages.

17 On April 2, 2020, Plaintiff propounded multiple sets of discovery including Requests for
18 Production of Documents, (Set One & Two); Special Interrogatories, (Set One, Two, & Three);
19 and Form Interrogatories, (Set One), on Defendant. Thereafter, on June 5, 2020, Defendant
20 responded to Plaintiff’s discovery requests.

21 On February 14, 2023, Plaintiff filed a First Amended Class Action Complaint for
22 Damages and Enforcement Under the Private Attorneys General Act, Cal. Labor Code § 2698 Et
23 Seq. (“Operative Complaint”).

24 Plaintiff’s core allegation is that Defendant has violated the California Labor Code by
25 engaging in a uniform practice and procedure, with respect to Plaintiff and the Class Members,
26 of, *inter alia*, claims under the California Labor Code, California Industrial Welfare
27 Commission Wage Orders, regulations, and/or other provisions of law, for failure to pay
28 overtime wages, failure to pay minimum wages, failure to provide compliant meal periods and

1 associated premium pay, failure to provide compliant rest periods and associated premium pay,
2 failure to provide compliant wage statements, failure to timely pay wages upon
3 termination of employment, failure to timely pay wages during employment, failure to
4 maintain requisite payroll records, failure to reimburse necessary business-related expenses,
5 unfair or unlawful business practices pursuant California Business and Professions Code §
6 17200, *et seq.*, and civil penalties pursuant to California Labor Code § 2698, *et seq.* Plaintiff
7 contends that he, and the Class Members, are entitled to, *inter alia*, unpaid wages, penalties
8 (including and not limited to, penalties pursuant to PAGA), and attorneys' fees.

9 Defendant has vigorously denied, and continues to deny, any liability and wrongdoing
10 associated with the claims alleged in the Action or otherwise. Defendant contends, *inter alia*,
11 that at all times it fully complied with all wage and hour laws, including all California Labor
12 Code and Industrial Wage Orders, and all regulations applicable to Plaintiff and the Class
13 Members in connection with the services performed for Defendant. Defendant further denies
14 that the Action is appropriate for class treatment or representative adjudication for any purpose
15 other than for settlement purposes only.

16 The Parties have actively litigated this matter since the Action was commenced on January
17 29, 2020. The Parties have conducted formal and informal discovery and investigation into the claims.
18 On January 10, 2022, the Parties participated in a formal, full-day mediation conducted by
19 Jeffrey Krivis, Esq., a well-regarded mediator experienced in mediating complex labor and
20 employment matters. With the aid of the mediator and his evaluation, the Parties ultimately
21 reached the Settlement described herein to resolve the Action in its entirety.

22 On January 19, 2023, Plaintiff filed a Motion for Preliminary Approval of Class Action
23 Settlement and supporting documents. On July 11, 2023, the Court entered an Order Granting
24 Plaintiff's Motion for Preliminary Approval of Class Action Settlement ("Preliminary Approval
25 Order"), thereby preliminarily approving the terms of the Settlement, the Class Notice, and the
26 proposed administration procedures and associated deadlines.

27 Plaintiff now moves for final approval of the, and all payments allocated and provided for
28 by the Settlement Agreement, including and not limited to the Individual Settlement Payments to

Settlement Class Members, Settlement Administration Costs to the Settlement Administrator, and the PAGA Payment to the State of California, and for approval of the requested Attorneys' Fees and Costs and Enhancement Payment, as set forth in the concurrently filed Motion for Attorneys' Fees, Costs, and Enhancement Payment.

III. SUMMARY OF THE SETTLEMENT TERMS AND PLAN OF DISTRIBUTION

Under the terms of the Settlement Agreement, Defendant will pay a Gross Settlement Amount of \$2,500,000.00.⁴ Subject to approval by the Court, the Net Settlement Amount will be calculated by deducting the following amounts from the Gross Settlement Amount: (1) attorneys' fees in an amount of \$875,000.00 (i.e., up to 35% of the Gross Settlement Amount) and reimbursement of costs and expenses of \$19,977.11 to Class Counsel (collectively referred to as the "Attorneys' Fees and Costs"); (2) settlement administration costs of \$11,000.00 to the Settlement Administrator, Simpluris ("Settlement Administration Costs"); (3) payment to the LWDA of its 75% share of the PAGA Penalties (i.e., \$93,750.00 out of \$125,000.00) ("LWDA Payment"); and (4) Enhancement Payment in the amount of \$7,500.00 to Plaintiff Roel Galicia ("Enhancement Payment").⁵

The Net Settlement Amount, which is estimated to be \$1,492,772.89, will be distributed to Settlement Class Members in accordance with the Settlement Agreement.⁶ The Settlement Administrator will calculate each Settlement Class Member's share of the available Net Settlement Amount ("Individual Settlement Payment") will divide the Final Net Settlement Amount by the number of weeks (i.e., seven (7) calendar day periods) each Class Member was employed by Defendant as an hourly-paid or non-exempt employee in California during the Class Period ("Workweeks") of all Settlement Class Members to yield the "Final Workweek Value,"

⁴ Settlement Agreement, ¶ 7.r.

⁵ *Id.*, ¶¶ 11, 12, 13 and 14.

⁶ This amount is higher than the amount stated in Paragraph 16 of the accompanying Declaration of Desirae Burton Regarding Notice and Settlement Administration ("Simpluris Declaration" or "Simpluris Decl.") because the Settlement Administrator's calculation assumes that Class Counsel will obtain litigation costs and expenses in the maximum amount of \$30,000.00, which is allocated under the Settlement. However, Class Counsel seeks the amount of only \$19,977.11 for reimbursement of litigation costs and expenses, and the difference of \$10,022.89 will remain part of the Net Settlement Amount

1 and multiply each Settlement Class Member's individual Workweeks by the Final Workweek
2 Value to yield his or her Individual Settlement Payment.⁷

3 Class Members had forty-five (45) calendar days after the initial mailing of the Class
4 Notice to Class Members to opt out of the Settlement, object to the Settlement, and/or dispute the
5 number of Workweeks to which they were credited ("Response Deadline").⁸ The Response
6 Deadline was October 7, 2023.⁹ ***As of the date of this Motion, the Settlement Administrator has***
7 ***received no written requests for exclusion from the Settlement ("Request for Exclusion") and***
8 ***no written objections to the Settlement ("Notice of Objection") from Class Members.***¹⁰

9 Each Individual Settlement Share will be allocated as follows: twenty percent (20%) as
10 wages (the "wage portion"), which will be reported on an IRS Form W-2; and the remaining
11 eighty percent (80%) as penalties, interest, and other non-wage damages, which will be reported
12 on an IRS Form 1099.¹¹ Settlement Class Members will be issued payment of their Individual
13 Settlement Share subject to reduction for the employee's share of taxes and withholdings with
14 respect to the wage portion of each Individual Settlement Share (the net payment is referred to as
15 an "Individual Settlement Payment").¹² The employer's share of taxes and contributions on the
16 wages portion of Individual Settlement Shares will be paid by Defendant separately and in
17 addition to the Gross Settlement Amount.¹³

18 The Individual Settlement Payment checks issued to Settlement Class Members will be
19 valid and negotiable for one hundred eighty (180) calendar days from the date of issuance, and
20 thereafter, shall be cancelled.¹⁴ After the 180-day check-cashing deadline, the Parties shall file a
21 stipulation to amend the Final Approval Order and Judgment that sets forth the total amount to
22 be paid to Settlement Class Members and the amount of unpaid residue, plus any interest on such
23 funds, to be paid to the *cy pres* recipient identified herein. Pursuant to California Code of Civil
24

25 ⁷ Settlement Agreement, ¶ 15.b.

26 ⁸ Settlement Agreement, ¶ 7.aa.

27 ⁹ Simpluris Decl., ¶ 11.

28 ¹⁰ *Id.*, ¶¶ 12 & 13.

¹¹ Settlement Agreement, ¶ 26.

¹² *Ibid.*

¹³ *Ibid.*

¹⁴ *Id.*, ¶ 20.

Procedure Section 384, all funds associated with such cancelled checks will be distributed by the Settlement Administrator to University of San Diego School of Law's free Worker's Rights Clinic, after the Court enters an order approving the Parties' stipulation to amend the Final Approval Order and Judgment.¹⁵ Settlement Class Members whose Individual Settlement Payment checks are cancelled shall, nevertheless, be bound by this Settlement Agreement.¹⁶

IV. THE SETTLEMENT ADMINISTRATION PROCESS

The Court-appointed Settlement Administrator, Simpluris, has taken all necessary steps to effectuate the notice and settlement administration process, as set forth in the Court's July 11, 2023 Preliminary Approval Order.

On July 27, 2023, Simpluris received the Court-approved text for the Class Notice.¹⁷

On August 2, 2023, Simpluris received a mailing list from Defendant's counsel that contained each Class Member's (1) last-known full name, (2) last-known mailing address, (3) last-known telephone number, (4) Social Security Number, (5) the start and end dates of employment as an hourly-paid or non-exempt employee of Defendant in California during the Class Period, and (6) such other information as is necessary for the Settlement Administrator to Calculate Workweeks ("Class Data and List").¹⁸ The Class Data and List contained information for nine hundred and twenty-four (924) individuals identified as Class Members.¹⁹ Simpluris processed the names and addresses through the National Change of Address Database ("NCOA") and updated the Class Data and List with any updated addresses located.²⁰

On August 23, 2023, Simpluris mailed the Class Notice via first class mail to nine hundred and twenty-four (924) individuals identified as Class Members in the Class Data and List.²¹

As of the date of this Motion, ten (10) Class Notices were returned as undeliverable with forwarding addresses, and Simpluris promptly re-mailed the Notice to the forwarding

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ Simpluris Decl., ¶ 5.

¹⁸ *Id.*, ¶ 6.

¹⁹ Ibid.

²⁰ *Id.*, ¶ 7.

²¹ *Id.*, ¶ 8.

addresses.²² Nine (9) Class Notices were returned as undeliverable without forwarding addresses.²³ Simpluris performed a skip-trace search on the nine (9) Class Notices that were returned to Simpluris without forwarding addresses, located an updated address for six (6) Class Members, and promptly re-mailed the Notice to the updated addresses.²⁴ Three (3) Class Notices were returned to Simpluris as undeliverable a second time.²⁵ Ultimately, three (3) Class Notices remain undeliverable because an updated address was not located through skip-tracing or the Class Notice was returned as undeliverable a second time.²⁶

As of the date of this Motion, the Settlement Administrator has not received any Objections or Requests for Exclusion from Class Members.²⁷

To date, there are nine hundred and twenty-four (924) Class Members who did not submit a timely and valid Request for Exclusion, and are therefore, deemed to be Settlement Class Members.²⁸ Pursuant to the terms of the Settlement, the Net Settlement Amount of approximately \$1,492,772.89 will be distributed to Settlement Class Members in accordance with the terms of the Settlement.²⁹ The highest Individual Settlement Payment is currently estimated to be \$8,777.65 and the average Individual Settlement Payment is currently estimated to be \$1,604.71.³⁰

V. THE COURT SHOULD GRANT FINAL APPROVAL OF THE CLASS ACTION SETTLEMENT.

The trial court has broad discretion to determine whether a class action settlement is fair and reasonable. *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 52. To determine whether the settlement is fair and reasonable, courts consider relevant factors such as:

²² *Id.*, ¶ 9.

²³ *Id.*

²⁴ Simpluris Decl., ¶ 9.

²⁵ *Id.*, ¶ 12.

²⁶ *Ibid.*

²⁷ *Id.*, ¶¶ 12 & 13.

²⁸ *Id.*, ¶ 15.

²⁹ *Id.*, ¶ 16; see also, n.7, *supra*.

³⁰ *Id.*, ¶ 17. The actual average and highest Individual Settlement Payments will be larger than the amounts stated in the Simpluris Declaration because the Net Settlement Amount is larger due to Class Counsel's request for reimbursement of litigation costs and expenses in an amount that is less than \$30,000.00 (the difference between the amount sought and the amount authorized under the Settlement, i.e., \$10,022.89, will be part of the Net Settlement Amount). See n.7, *supra*.

the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.

Dunk v. Ford Motor Co. (1996) 48 Cal.App.4th 1794, 1801. "The list of factors is not exclusive and the court is free to engage in a balancing and weighing of the factors depending on the circumstances of each case." *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245. "Due regard should be given to what is otherwise a private consensual agreement between the parties." *Dunk, supra*, 48 Cal.App.4th at 1801.

The proponent of the settlement has the burden to show that it is fair and reasonable. *Wershba, supra*, 91 Cal.App.4th at 245. At the final approval stage, a presumption of fairness exists where, as here: "(1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small." *Dunk, supra*, 48 Cal.App.4th at 1802. In reviewing a class settlement, the court need not reach any ultimate conclusions on the issues of fact and law that underlie the merits of the dispute. *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1146. The inquiry is not whether the settlement agreement is the best one that class members could have possibly obtained, but whether the settlement, taken as a whole, is "fair, adequate, and reasonable." *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 55. A settlement need not obtain 100 percent of the damages sought in order to be fair, reasonable, and ultimately, meaningful. *Wershba, supra*, 91 Cal.App.4th at 251. Even if the proposed settlement affords relief that is substantially narrower than it would be if the case were to be successfully litigated, that is no bar to a class settlement because the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding prolonged litigation. *Id.*

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1 A. **The Settlement Resulted from Arm’s-Length Negotiations Based Upon**
2 **Extensive Investigation and Discovery.**

3 The Parties actively litigated the case since it commenced on January 29, 2020. Class
4 Counsel conducted formal and informal discovery and investigation into the facts of the case, to
5 assess the veracity, strength, and scope of the claims, and was preparing the matter for class
6 certification and trial, prior to reaching the Settlement.³¹

7 The Parties conducted significant formal and informal discovery and investigation into
8 the facts of the case, and also formally and informally exchanged, reviewed, and analyzed a
9 volume of information, documents, and data obtained from Plaintiff, Defendant, and other
10 sources, throughout the course of the litigation and in connection with mediation and settlement
11 negotiations.³² The volume of data and documents that Class Counsel reviewed and analyzed
12 included and was not limited to: Plaintiff’s employment records, a sampling of Class Members’
13 time and pay records, Defendant’s operations and employment practices, procedures, and
14 policies documents (including, *inter alia*, Defendant’s Employee Handbooks, arbitration
15 agreement, and meal break waiver), among other information and documents.³³ Class Counsel
16 developed liability, damages, and penalties valuation models in the course of litigation and in
17 connection with mediation and settlement negotiations, and met and conferred with Defendant’s
18 counsel on numerous occasions, e.g., to discuss issues relating to the pleadings, discovery, and
19 the production of information, documents, and data in the course of litigation and in connection
20 with mediation and settlement negotiations.³⁴ Class Counsel had the opportunity to interview and
21 obtain information from Plaintiff, and other Class Members, and percipient witnesses.³⁵ Class
22 Counsel developed liability, damages, and penalties valuation models in the course of litigation
23 and in connection with mediation and settlement negotiations. Class Counsel also met and
24 conferred with Defendant’s counsel on numerous occasions, e.g., to discuss issues relating to the

25
26 ³¹ Declaration of Edwin Aiwasian (“Aiwasian Decl.”), ¶ 6 filed concurrently herewith the Motion for Attorneys’
Fees, Costs, and Enhancement Payment.

27 ³² Ibid.

³³ Aiwasian Decl., ¶ 6.

28 ³⁴ Ibid.

³⁵ Ibid.

1 pleadings, case management, discovery, the production of information, documents, and data in
2 the course of litigation and in connection with mediation and settlement negotiations, as well as
3 mediation and settlement negotiations. Class Counsel also drafted pleadings and the mediation
4 brief, and prepared for and attended court proceedings, the mediation, and settlement
5 negotiations, among other tasks.³⁶

6 After conducting significant formal and informal discovery and investigation into the
7 facts of the case, the Parties attended a formal, full-day mediation conducted by Jeffrey Krivis,
8 Esq., a well-respected mediator experienced in mediating complex labor and employment
9 matters.³⁷ In the course of mediation and settlement negotiations, the Parties exchanged
10 information, documents, and data, and discussed all aspects of the case, including the risks and
11 delays of further litigation, the risks and expenses to the Parties of proceeding with class
12 certification adjudication, the law relating to class certification, off-the-clock theory, meal and
13 rest periods, representative PAGA claims, and wage-and-hour enforcement, among other
14 things.³⁸ During all settlement discussions, the Parties conducted their negotiations at arm's
15 length in an adversarial position.³⁹ Arriving at a settlement that was acceptable to both Parties
16 was not easy. Defendant and its counsel felt strongly about their ability to prevail on the merits
17 and at certification, and Plaintiff and Class Counsel believed that they would be able to obtain
18 class certification and prevail at trial.⁴⁰ After conducting significant formal and informal
19 discovery and investigations, extensive settlement negotiations, and with the aid of the
20 mediator's evaluation, the Parties have agreed that the matter is well-suited for settlement given
21 the legal issues relating to Plaintiff's principal claims, as well as the costs and risks to both sides
22 that would attend further litigation.⁴¹

23 The Settlement takes into account the strengths and weaknesses of each side's position
24 and the uncertainty of how the case might have concluded at certification, trial and/or appeals.

26 ³⁶ Ibid.

27 ³⁷ Aiwazian Decl., ¶ 8.

28 ³⁸ *Id.*

³⁹ Ibid.

⁴⁰ Ibid

⁴¹ Ibid

Class Counsel had the opportunity to interview and obtain information from their respective witnesses.⁴² Class Counsel also reviewed and analyzed a large volume of information, documents, and data obtained from Defendant, Plaintiff, and other sources, and performed significant research into the applicable law, which is constantly evolving as it relates to certification, off-the-clock theory, meal and rest periods, rounding, representative PAGA claims and penalties, wage-and-hour enforcement, Plaintiff's claims and damages, and Defendant's defenses, as well as facts discovered.⁴³ The Settlement Agreement reached was based on this large volume of facts, evidence, and investigation.⁴⁴ Additionally, Class Counsel has extensive experience in handling complex wage-and-hour matters, including significant experience in employment class action litigation.⁴⁵

B. The Risks Inherent in Continued Litigation Favor Final Approval of the Settlement.

The Settlement, which provides for a Gross Settlement Amount of \$2,500,000.00, represents a fair, adequate, and reasonable resolution of the case, given the risks inherent in litigating class and representative claims through certification proceedings, trial, and/or appeals.⁴⁶ The Settlement was calculated using the information and data uncovered during through extensive case investigation, formal and informal discovery, and the exchange of information in the context of mediation.⁴⁷ Had the action not settled, Defendant would have vigorously challenged class certification, manageability of representative adjudication, and liability. Defendant contended that individualized questions of fact predominated over any common issues, and these issues would pose challenges to certification, representative adjudication. Defendant would have likely argued again at trial, if any, that Plaintiff's claims were not appropriate for class-wide adjudication. On the other hand, Defendant also faced the risk of the Court certifying a class and allowing a jury to decide Plaintiff's claims on a class-

⁴² *Id.*, ¶ 6.

⁴³ Aiwazian Decl., ¶ 7.

⁴⁴ *Id.*, ¶¶ 6 & 8.

⁴⁵ *Id.*, ¶¶ 16-19.

⁴⁶ *Id.*, ¶¶ 8 & 22.

⁴⁷ *Id.*, ¶¶ 5-8.

1 wide or representative basis. Additionally, preparation for trial would have been expensive for
2 all parties.

3 It is preferable to reach an early resolution of a dispute because such resolutions save
4 time and money that would otherwise go to litigation. If this matter had settled after further
5 litigation, the settlement amount would have taken into account the additional costs incurred, and
6 there might have been less money available for Class Members after all was said and done. This
7 is not just an abstract contention. The risks and expenses of further litigation outweighed any
8 benefit that might have been gained otherwise. These risks of further litigation include a
9 determination that the claims were unsuitable for class treatment adjudication, class de-
10 certification after certification of a class, allowing a jury to decide the claims asserted in the case,
11 and the real possibility of no recovery after years of litigation. Additionally, the Parties were
12 moving into the phase of the litigation where they would have to conduct a significant amount of
13 additional discovery, including and not limited to, depositions of Defendant's Person Most
14 Knowledgeable designees, expert witnesses, and percipient witnesses, such as managers,
15 supervisors, and other current and former employees throughout the State of California. More
16 discovery would have certainly followed, which would have cost the Parties additional time and
17 money. In contrast, the Settlement provides real and significant benefits for the Class here and
18 now, while avoiding the further expenses, risks, and delay of prolonged litigation with only the
19 possibility of recovery.

20 It would be grossly inefficient for such a large class of current and former employees to
21 bring individual actions to recover from Defendant for the alleged violations of wage-and-hour
22 laws. Moreover, the potential individual recovery that could be obtained by a Class Member
23 would not be significant enough to provide him or her with the incentive to sue. By granting final
24 approval of the Settlement, the Court can approve a resolution that provides a certain and
25 substantial recovery for Class Members and the State of California.

26 **C. The Settlement Is Fair, Reasonable, and Adequate.**

27 The Settlement, which provides for a Gross Settlement Amount of \$2,500,000.00,
28 represents a fair, reasonable, and adequate resolution of the case. The Settlement was calculated

1 using information and data uncovered through extensive case investigation, informal and formal
2 discovery, and the exchange of information in the context of preparing for mediation and
3 conducting ongoing settlement negotiations. The Settlement takes into account the potential
4 risks and rewards inherent in any case and, in particular, in this matter. Moreover, considering
5 all of the facts in the case, the Gross Settlement Amount represents a considerable recovery.

6 Even after deducting attorneys' fees in the amount of \$875,000.00, litigation costs and
7 expenses in the amount of \$19,977.11, Enhancement Payment in the amount of \$7,500.00, and
8 Settlement Administration Costs in the amount of \$11,000.00, and the LWDA Payment in the
9 amount of \$93,750.00 from the Gross Settlement Amount of \$2,500,000.00 as provided for by
10 the Settlement, the Net Settlement Amount is currently estimated to be \$1,492,772.89.⁴⁸ Under
11 the Settlement Agreement, the Gross Settlement Amount will be fully paid out, in accordance
12 with the terms of the Settlement. As discussed in Section III, *supra*, each Settlement Class
13 Member will be paid a *pro rata* share of the Net Settlement Amount, based on the number of
14 Workweeks credited to him or her. To date, there are nine hundred and twenty-four (924)
15 Settlement Class Members, representing 100% of the Class.⁴⁹ The highest Individual Settlement
16 Share to a Settlement Class Member is currently estimated to be \$8,777.65. and the *average*
17 Individual Settlement Share is currently estimated to be at least \$1,604.71.⁵⁰ The State of
18 California is slated to receive \$93,750.00 for its 75% portion of the PAGA Penalties. These are
19 significant recoveries, particularly in light of the risks of litigation.

20 At the final approval stage, "[a]n allocation formula need only have a reasonable, rational
21 basis [to warrant approval], particularly if recommended by experienced and competent class
22 counsel." *In re American Bank Note Holographics, Inc., Securities Litigation* (S.D.N.Y. 2001)
23 127 F.Supp.2d 418, 429-30. The *pro rata* allocation here is a fair and reasonable way to
24 distribute the Net Settlement Amount. In light of the above considerations, Class Counsel
25 believe that the Settlement as a whole is fair, reasonable, and adequate, and in the best interest of
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27 ⁴⁸ Simpluris Decl., ¶ 16.

28 ⁴⁹ *Id.*, ¶ 15.

⁵⁰ *Id.*, ¶ 17.

1 the Class Members.⁵¹ Although the recommendations of Class Counsel are not conclusive, the
2 Court can properly take the recommendations into account, particularly if Class Counsel appears
3 to be competent, have experience with this type of litigation, and significant discovery and
4 investigation have been completed, as is the case here. Conte & Newberg, *Newberg on Class*
5 *Actions* (4th Ed., 2002) § 11.47. Accordingly, the Court should grant final approval of the
6 Settlement.

7 **D. The Class Was Represented by Competent Counsel.**

8 Class Counsel have extensive experience in employment class action law and complex
9 wage-and-hour litigation.⁵² Lawyers *for* Justice, PC has been appointed class counsel in
10 numerous complex wage-and-hour cases, and have recovered millions of dollars for individuals
11 in California.⁵³ Both Parties' counsel were capable of assessing the strengths and weaknesses of
12 the Class Members' claims against Defendant and the benefits of the Settlement under the
13 circumstances of the case and in the context of a private, consensual settlement agreement.

14 **E. There Are No Notice of Objections to the Settlement.**

15 The Settlement has been well received by the Class – ***not a single Class Member***
16 ***objected to or opted out of the Settlement.***⁵⁴ Specifically, no objections have been made as to
17 the Gross Settlement Amount or requested Attorneys' Fees and Costs, Enhancement Payment,
18 Settlement Administration Costs, or the allocation for PAGA Penalties. California courts have
19 consistently found that a small number of objectors indicates the class' support for a settlement
20 and strongly favors final approval. *Wershba, supra*, 91 Cal.App.4th at 250-51 (final approval
21 granted despite 20 objectors); *7-Eleven Owners, supra*, 85 Cal.App.4th at 1152-53 (final
22 approval granted despite 9 objectors).

23 Here, the lack of any objections speaks volumes about the fairness, reasonableness, and
24 adequacy of this Settlement. Accordingly, the Settlement as a whole is presumed to be fair,
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27 ⁵¹ Aiwazian Decl., ¶ 22.

⁵² Aiwazian Decl., ¶¶ 16-19.

⁵³ *Id.*, ¶¶ 16-19.

⁵⁴ Simpluris Decl., ¶¶ 12 & 13.

reasonable, and adequate, and the Court should grant final approval of the Settlement in its entirety. *Dunk, supra*, 48 Cal.App.4th at 1802.

VI. THE SETTLEMENT ADMINISTRATION COSTS ARE FAIR AND REASONABLE AND SHOULD BE APPROVED.

As set forth in the accompanying Simpluris Declaration, the total costs incurred and to be incurred by Simpluris for the notice and settlement administration process are \$11,000.00.⁵⁵ The costs incurred and to be incurred include, but are not limited to, expenses for formatting, printing, and mailing the Class Notice to the Class Members in both English and Spanish; performing skip-trace searches on Class Notices returned as undeliverable; re-mailing the Class Notices to any updated addresses located by skip-trace search; receiving, reviewing, and processing Requests for Exclusion, Notices of Objections, and disputes regarding Workweeks (if any); handling inquiries from Class Members regarding the Settlement; calculating Individual Settlement Payments and preparing the associated tax forms; and transmitting payments, among other things.⁵⁶

Accordingly, the Court should grant final approval of payment to Simpluris, a necessary third-party for handling of the notice and settlement process, in the amount of \$11,000.00.

VII. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court grant final approval of the Settlement, and all payments allocated and provided for by the Settlement Agreement, including and not limited to the Individual Settlement Payments to Settlement Class Members, Settlement Administration Costs to the Settlement Administrator, and the LWDA Payment to the State of California, in their entirety, as sought herein.

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⁵⁵ Simpluris Decl., ¶ 18.

⁵⁶ *Id.*, ¶ 3.

Dated: October 25, 2023

LAWYERS for JUSTICE, PC

By:



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